

REMARKS

Claims 30, 31, 33-35 and 37-49 are pending and being examined.

ITEMS 1-3: CLAIMS STATUS

At page 2 of the Office Action, the Office indicated that claims 1-29, 32 and 36 were cancelled, claims 30 and 37 were amended and claims 38-49 were added. Accordingly, claims 30-31, 33-35 and 37-49 are pending and under consideration. No response is due.

ITEMS 4-9: WITHDRAWN REJECTION

At pages 2-3 of the Office Action, the Office indicated that the following objections/rejections have been withdrawn:

- (i) objection to the specification at page 39 for containing the hyperlink www.genweb.com;
- (ii) rejection of claim 36 under 35 U.S.C. §112, first paragraph, for failing to comply with the written description requirement;
- (iii) rejection of claims 30-31 and 33-37 under 35 U.S.C. §112, first paragraph, as not enabling for a method of detecting a disease state in a subject comprising administering an immunoconjugate comprising an antibody variant;
- (iv) rejection of claims 30-31 and 33-37 under 35 U.S.C. §102(e) as anticipated by Ali et al. (US 2005/0147556 A1);
- (v) the provisional obviousness-type double patenting rejection of claims 30-31 and 33-37 as unpatentable over claims 30-36 of the co-pending application U.S. Serial No. 10/895,183;
- (vi) the nonstatutory obviousness-type double patenting rejection of claim 36 as unpatentable over claims 10-11 of U.S. Patent No. 6,682,902.

No response is due. Applicants are pleased that the rejections have been withdrawn. For the record, in connection with Ali et al. (US 2005/0147556 A1), in a January 31, 2008

teleconference with the Examiner, Applicants' undersigned representative reminded the Examiner that the cited Ali (US 2005/0147556 A1) is a divisional application of an application that issued as U.S. Patent No. 6,960,433, issued on November 1, 2005, and discussed Applicants' position that the pending claims are novel and nonobvious over the '433 patent, as well as the cited Ali publication.

ITEM 10: DOUBLE PATENTING REJECTION

At pages 3-4 of the Office Action, the Office has maintained rejection of claims 30-31, 34-35 and 37 and applied the rejection to claims 38-41 and 43-49, on the ground of nonstatutory obviousness-type double patenting, alleging that claims 30-31, 34-35, 37-41 and 43-49 are unpatentable over claims 1-7 and 9-11 of U.S. Patent No. 6,682,902.

In response, Applicants state that U.S. Patent No. 6,682,902 and the subject application are both owned by Bayer Schering Pharma Aktiengesellschaft. Additionally, Applicants provide a Terminal Disclaimer executed by Dr. Tanja Pintsch and Dr. Jürgen Kostrucha, Patents and Licensing, Bayer Schering Pharma Aktiengesellschaft, accompanied by the appropriate assignments (annexed hereto as Exhibit I and Certificate Under 37 C.F.R. §3.73 (b) as Exhibit II). The subject application is a continuation-in-part application of U.S. Serial No. 09/732,357, filed December 7, 2000, now U.S. Patent No. 6,682,902, which claims the priority of U.S. Serial No. 60/172,370, filed December 16, 1999. Copies of the recorded assignment in the chain of title are attached herewith as Exhibits II A-II C.

In the enclosed Terminal Disclaimer, Dr. Pintsch and Dr. Kostrucha state that Bayer Schering Pharma Aktiengesellschaft is the owner of all right, title and interest in the above-identified application, and it disclaims the terminal part of any patent granted in this application which would extend beyond the expiration date of U.S. Patent No. 6,682,902, issued January 27, 2004.

Further, Bayer Schering Pharma Aktiengesellschaft agree that any patent granted on the above-identified application shall be enforceable only for and during such period that the

legal title to such patent shall be the same as the legal title to U.S. Patent No. 6,682,902, issued January 27, 2004.

In view of the Terminal Disclaimer, Applicants request that the Patent Office reconsider and withdraw the rejection under nonstatutory obviousness-type double patenting over U.S. Patent No. 6,682,902 and allow the claims to issue.

ITEM 11: CLAIM OBJECTION

At page 4 of the Office Action, the Office has objected to claim 33 as being dependent upon a rejected base claim.

In view of the above arguments and the Terminal Disclaimer, Applicants contend that the base claims should be deemed allowable. Accordingly, Applicants respectfully request withdrawal of the objection to claim 33.

CONCLUSION

If a telephone interview would be of assistance in advancing the prosecution of the subject application, Applicants' undersigned attorney invites the Examiner to telephone her at the number provided below.

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No fees are due in connection with this Communication. However, if further fee is deemed necessary, Applicants authorize the Patent Office to charge the fee to the Deposit Account No. 50-0306.

Respectfully submitted,

Sarah B. A.

Sarah B. Adriano
Registration No. 34,470
SaraLynn Mandel
Registration No. 31,853
Mandel & Adriano
572 East Green Street, Suite 203
Pasadena, CA 91101
(626) 395-7801
Customer No. 26,941